

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MADY CHAN,

Defendant.

Case No. 96-cr-00094-JSW-13

**ORDER TO SHOW CAUSE WHY
EVIDENTIARY HEARING SHOULD
NOT BE HELD ON CLAIM V**

Defendant, Mady Chan, has filed a motion to vacate his sentence, pursuant to 28 U.S.C. section 2255. The Court has considered the parties' papers, relevant legal authority, and the record in this case, and it concludes that, with respect to all but Claim V, the motion could be resolved without an evidentiary hearing.

In Claim V, Chan argues that trial counsel was ineffective based on an alleged conflict of interest. Because the details of that conflict are under seal, the Court shall not address them in this publicly filed Order. The Government has opposed the motion and contends that Claim V can be resolved without an evidentiary hearing based on a hearing that occurred before Judge Patel on May 17, 2001. It notes that Chan raised this issue presented in Claim V prior to sentencing and that Judge Patel conducted an evidentiary hearing, found that Chan was not credible, and concluded there was no conflict. (Opp. Ex. 1 (Request for Recusal), Ex. 2 (Transcript of Hearing May 17, 2001 ("May 17 Tr.") at 64:16-18.) In the course of that hearing, Chan's substitute counsel made representations about the alleged conflict that would have contradicted Chan's testimony.

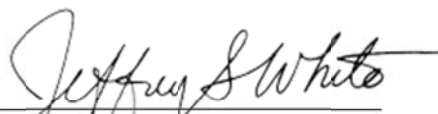
In support of his motion, Chan submits two sets of notes and two attorney declarations, which were obtained after the hearing before Judge Patel, and which support Chan's allegations of

1 a conflict. The Government has not addressed any of this evidence in connection with its
2 opposition to Chan's motion. It also has not addressed Chan's argument that if the alleged conflict
3 existed, and that conflict adversely affected counsel's performance, relief would be warranted on
4 Claim V.

5 Accordingly, the Government is HEREBY ORDERED TO SHOW CAUSE, in writing,
6 why Chan has not raised issues of disputed fact that would warrant an evidentiary hearing on
7 Claim V. The Government's response to this Order to Show Cause **shall be filed under seal** and
8 shall be due by no later than October 22, 2015. Defendant shall file a reply to the Government's
9 response, which also shall be filed under seal, to this Order to Show Cause by no later than
10 November 5, 2015. The Court shall consider the parties' responses and, if it determines an
11 evidentiary hearing is necessary, shall set a status conference on the Court's regular criminal
12 calendar for purposes of discussing the scope and timing of any such hearing.

13 **IT IS SO ORDERED.**

14 Dated: October 1, 2015

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17 JEFFREY S. WHITE
18 United States District Judge
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